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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ALHAMBRA TRUCKING CO., and T. T. CONNOLLY, ET AL., doing business as IPCO TRANSPORTATION COMPANY,
Appellants,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Appellee.*

On Appeal from the Supreme Court of the State of California

JURISDICTIONAL STATEMENT

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v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Appellee.*

On Appeal from the Supreme Court of the State of California

JURISDICTIONAL STATEMENT

The above-captioned appeals from orders of the Supreme Court of California, filed November 13 and December 18, 1963, challenge the validity under the Fourteenth Amendment of a unique and untested state regulatory procedure under which:

1. the California Public Utilities Commission in two separate cases has imposed fines and other penalties

on two small truckers based solely on an unarticulated and expansive interpretation of a vague regulatory provision which has received no judicial definition;

2. the only State court empowered to review the agency's decision has summarily denied review without requiring the administrative record to be brought before it.

Inasmuch as these appeals present the same legal issues, a single Jurisdictional Statement on behalf of both appellants is being filed in accordance with rule 15(3) of this Court.

OPINIONS BELOW

The orders of the Supreme Court of California (Appendix A, *infra*, pp. 1a-2a, 15a-16a) are unreported. The majority and dissenting opinions of the Public Utilities Commission of the State of California are reported at 60 Cal. PUC 537, and 60 Cal. PUC 544, and are reprinted in Appendix A, *infra*, pp. 3a, 17a.

JURISDICTION

On February 5, 1963, the Public Utilities Commission of the State of California (hereinafter Commission) issued separate orders finding that each of these appellants had violated § 3668 of the California Public Utilities Code and imposing various penalties, including fines of $2,000.

Following denials of rehearing by the Commission, separate petitions for review by the Supreme Court of California, both presenting federal constitutional questions under the Fourteenth Amendment, were timely filed by both appellants pursuant to the provisions of California Public Utilities Code § 1756 *et seq.*

On October 16, 1963, the California Supreme Court summarily denied appellant Ipco's review petition. Following a petition for rehearing, again raising federal constitutional questions, an order denying rehearing was filed November 13, 1963. Notice of appeal to the Supreme Court of the United States was filed in the Supreme Court of California on February 10, 1964. On April 2, 1964 and further on June 3, 1964, the Chief Justice of the Supreme Court of California, pursuant to Rule 13(1) of this Court, granted until July 16, 1964, to docket the record herein.

On November 27, 1963 the Supreme Court of California, with two judges dissenting, also summarily denied appellant Alhambra's petition for review. Alhambra's petition for rehearing, again maintaining that its Fourteenth Amendment rights had been infringed, was denied on December 18, 1963. Notice of appeal to the Supreme Court of the United States was filed with the California Supreme Court on March 17, 1964. On April 27, 1964 the Chief Justice of the Supreme Court of California, pursuant to Rule 13(1) of this Court, granted until July 16, 1964, to docket the record herein.

The jurisdiction of this Court is conferred by Title 28 of the United States Code, § 1257(2). Jurisdiction of this Court to review by appeal the judgment of the Supreme Court of California, sustaining the Commission's application of California statutes against timely raised federal constitutional objections, is confirmed by *Atchison, T. & S. F. Ry. Co.* v. *Public Utilities Commission of California*, 346 U.S. 346 (1953).

STATUTORY PROVISIONS INVOLVED

California Public Utilities Code, §§ 3668, 3774, 1756-57, and 1759-60, whose validity as applied is questioned on this appeal, are set out in Appendix B (pp. 28a-31a, *infra*).

QUESTIONS PRESENTED

By summarily denying review without opinion and without considering the administrative record in these two cases, the California Supreme Court upheld § 3668 of the California Public Utilities Code as applied by the Commission, notwithstanding appellants' contentions that the Commission's imposition of fines and penalties on the basis of a vague and undefined "administrative test" which departed from "established judicial doctrine" would deprive them of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

In denying appellants' petitions for rehearing, the California Supreme Court again upheld the Commission's application of § 3668 in the face of appellants' reiterated substantive due process argument supplemented by contentions that approval of the Commission's punitive orders without "an effective judicial review" constituted a denial of procedural due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

Accordingly, the questions presented are:

(1) whether the Due Process clause of the Fourteenth Amendment is not infringed by a state statute under which an administrative agency has imposed fines and penalties on the basis of an "administrative

test", never judicially defined and so vague and uncertain that men of common intelligence must necessarily guess as to the extent of its prohibition;

(2) whether the Due Process clause of the Fourteenth Amendment is not infringed by a state procedure under which the only court authorized to pass upon an administrative decision imposing fines and penalties can deny review summarily, in the face of federal constitutional questions, without considering the administrative record, without hearing argument, and without any articulation of the reasons or basis for its decisions.

STATEMENT

Both Alhambra Trucking Co., a California corporation, and Ipco Transportation Co., a partnership, are highway permit carriers duly licensed by the Public Utilities Commission of California. Both are subject to the provisions of California Public Utilities Code § 3668, prohibiting transportation of property between points within the State at rates less than the minimum rates established by the California Commission. The minimum rates established by the Commission (Minimum Rate Tariff No. 2) exempt transportation "performed for other carriers" by "independent-contractor subhaulers." Thus, there are no minimum rates established by the California Commission applicable when one carrier utilizes another carrier as a subhauler or subcontractor. On some, but not all, of their shipments, both carriers, in accordance with common practice in California and as permitted by Minimum Rate Tariff No. 2, employed such subhaulers (other carriers acting as subcontractors) and paid them a negotiated rate less than the minimum rates

which would have been applicable except for the carrier-subhauler or contractor-subcontractor relationship.

As shown by information on file with the Commission for some time, a degree of common ownership exists between each carrier and one of its shippers.

Alhambra's application for a city carrier permit, filed September 10, 1958, declared that two of the six directors of Black Diamond Co., a shipper, also served as officers or directors of Alhambra. Three of the thirteen stockholders of Black Diamond hold some stock in Alhambra. Alhambra conferred with representatives of the Commission at least once a year since its formation in 1954, and responded fully to inquiries concerning its relationship with Black Diamond. For seven years the Commission did not question Alhambra's operations under its unrestricted highway contract carrier permit, and in 1958 it issued Alhambra a city carrier permit which similarly contained no restrictions on Alhambra's use of subhaulers.

Ipco's relationship with a shipper, Sequoia Industries, Inc., is limited to ownership of less than 50% of Sequoia's stock by three individuals who are also limited partners of Ipco, holding a total interest in the carrier of approximately 24%. Ipco is managed by two general partners who are also employees of Sequoia but who own none of Sequoia's stock.

The Commission Proceedings

1. *Alhambra.* On or about December 5, 1961, the Commission issued an *ex parte* "Order Instituting Investigation" to determine whether or not Alhambra was complying with certain sections of the Public

Utilities Code, including § 3668. After administrative hearings, a divided Commission (60 Cal. PUC 544) declared that Alhambra constituted a "device" whereby Black Diamond obtained transportation at less than minimum rates in violation of §3668, and ordered Alhambra to cease and desist. In addition, it ordered Alhambra to pay to its subhaulers the difference between the minimum rates and the charges previously paid to the subhaulers on all subhauled Black Diamond shipments since July 1, 1960 (App. A, pp. 9a-12a, infra). This order inflicts a potential liability in excess of $25,000 from Alhambra to the subhaulers.

Finally, utilizing new procedures authorizing it to impose fines on the basis of administratively adjudged violations of the Public Utilities Code (Public Utilities Code § 3774, as amended in 1961), the Commission ordered Alhambra to forfeit its permits for five days, or, in the alternative, to pay a fine of $2,000 (pp. 10a, 12a, *infra*).

The Commission's imposition of these penalties was not and could not have been based on any "known false billing, classification, weight, weighing or report of weight", or any similar "device" forbidden by § 3668. Rather, after reciting the common ownership of Alhambra and Black Diamond, and conceding that Alhambra transports *92% of its business with its own equipment* "and charged and received from Black Diamond Company the full minimum rate for the transportation of property" (p. 6a, *infra*), the Commission majority concluded that the only

> "significant fact is that, to the extent that Alhambra Trucking paid less than the minimum rates for transportation of property in behalf of Black Diamond, Alhambra Trucking thereby reduced

> its expenses and increased its income, which increased income ultimately inures to the benefit of Black Diamond, a majority stockholder interest of which, for the purposes herein, is substantially identical with the majority stockholder interest of Alhambra Trucking. By reason of the foregoing, the Black Diamond Company benefits notwithstanding that Alhambra's profits or surplus remain undistributed." (p. 7a, *infra*).

As the sole authority for this decision, the Commission cited (p. 7a, *infra*) its own ruling in *Soule Transportation, Inc.*, 59 Cal. PUC 261 (Jan. 9, 1962), which had modified the permit of a "carrier" which owned *no* equipment and was a *100% subsidiary* of its *only* shipper on the grounds that "*unity* of ownership, interest, and control" between shipper and carrier made the latter a "device" under § 3668.[1]

Commissioner Mitchell, the senior member of the Commission, dissented from this retroactive penalization of Alhambra. Viewing the 8% of Alhambra's traffic transported by subhaulers as "minimal", in light of its $100,000 a year business derived from several shippers, and finding that Alhambra's operations under its unrestricted permits were in no wise "designed to constitute a device and thus evade Minimum Rate Tariff No. 2", he queried the Commission's punitive application of its "profit formula". Since California had *not* outlawed shipper-carrier affiliations, and since subhauler rates may be negotiated irrespective of the Commission's minimum-rate tariffs, he perceived that its present approach inconsistently penalized carriers such as Alhambra who paid subhaulers less than the minimum rate but permitted any

[1] Unless otherwise indicated, all emphasis is supplied.

shipper operating under a carrier permit to "effect [other] economies [economies] in operation which will redound to its financial advantage." In any event, he concluded that the majority was acting "arbitrarily" in imposing any punitive sanction beyond a future restriction on Alhambra's use of subhaulers. (App. A, pp. 12a-14a, *infra*).

The majority later denied Alhambra's petition for rehearing, which argued in part that the "application of this arbitrary formula of 'common ownership' constitutes a taking of its property without due process of law". (Alhambra Petition for Review, Exhibit C, p. 92).

2. *Ipco.* The proceedings in the *Ipco* case were likewise instituted by the Commission's *ex parte* "Order Instituting Investigation" issued on or about May 22, 1962. The order charged that Ipco was "functioning as an alter ego" of Sequoia. (Ipco Petition for Review, Exhibit A, p. 48). After administrative hearings, the Commission issued an Opinion and Order (60 Cal. PUC 537), virtually identical in all pertinent aspects with the Alhambra order. The opinion recites all instances of common ownership or management between Ipco and Sequoia, but acknowledges that "Ipco charged and received from Sequoia the full minimum rate for the transportation of property" (App. A, pp. 19a-20a, *infra*). Without finding the "alter ego" relationship charged in the complaint, the opinion asserted that the only

> "significant fact is that, to the extent that Ipco paid less than the minimum rates for transportation of property in behalf of Sequoia, Ipco thereby reduced its expenses and increased its income, which increased income ultimately in part inures

to the benefit of Sequoia, of which substantial stockholders are also partners in Ipco." (p. 21a, *infra*).

Relying only on its own *Soule* decision (p. 21a, *infra*), the Commission labeled Ipco a "device" and, as in *Alhambra,* ordered the carrier to cease and desist, to reimburse its subhaulers for transportation since May 1, 1961 (thus inflicting a potential $75,000 liability) and to forfeit its permit for five days, or in the alternative, to pay a fine of $2,000 (pp. 24a-26a, *infra*).

Presentation of Constitutional Issues Below

Under California Public Utilities Code § 1759, the California Supreme Court is the only court empowered to review decisions of the Public Utilities Commission.[2] Its jurisdiction is invoked by a petition for writ of review under § 1756. This section also provides that the writ "shall direct the Commission to certify its record in the case to the court."

In their petitions for review, both Appellants urged that the penalties imposed by the Commission's decision deprived them of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, because based on a vague and unarticulated "administrative test" which was never defined or clarified by any court.[3]

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[2] See also *Pratt* v. *Coast Trucking, Inc.*, 5 Civ. No. 332 (Calif. D.C.A., June 23, 1964) (Commission decision held binding and unreviewable in subhauler's suit to recover "undercharges").

[3] Appellants also pointed out that the Commission's decisions made no "findings on material issues" and thus failed "to accurately state the criteria" on which its decisions were based or "to afford a rational basis for review". (Petitions for Review; Section B; Memoranda of Points and Authorities, Section B).

Both also asserted that they "could not have foreseen the arbitrary action taken by the Commission." (Petitions for Review, Section C; Memoranda of Points and Authorities in Support of Petitions, Section C). In addition, each appellant expressly requested the Court to "exercise its independent judgment on the law and the facts" as required by California Public Utilities Code § 1760 "in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States." (Alhambra Memorandum of Points and Authorities, p. 46, n. 6; Ipco Memorandum of Points and Authorities, p. 44, n. 6).

Despite these claims that federal constitutional rights were infringed by the Commission's action, the California Supreme Court, without certification of the record, and without hearing oral argument or articulating the reasons or basis for its decision, summarily denied review. In the *Alhambra* case, two justices dissented.

After denial of their review petitions, both appellants petitioned for rehearing, reiterating their contentions that "petitioner is being denied its constitutional right to substantive due process of law". Appellants also contended that the summary denial of review by the *only* state court empowered to review orders of the Public Utilities Commission abridged their Fourteenth Amendment right to "procedural due process of law". (Alhambra Petition for Rehearing, p. 5; Ipco Petition for Rehearing, p. 4).

By its summary denials, the California Supreme Court upheld the Commission's application of § 3668, despite appellants' Fourteenth Amendment conten-

tions. It also applied § 1756 *et seq.* so as to reject appellants' timely contentions that procedural due process required "review" of the Commission's punitive orders to consist of more than a summary denial of review which did not even consider the administrative record. *Atchison, T. & S. F. Ry. Co.* v. *Public Utilities Commission of California*, 346 U. S. 346, 348-9 (1953); cf. *Konigsberg* v. *State Bar of California*, 353 U.S. 252 (1957).

THE QUESTIONS ARE SUBSTANTIAL

This appeal, involving the actions of the bellwether California Public Utilities Commission, presents issues of crucial importance particularly to small truckers and shippers, whose ability to compete with established large common carriers and integrated carrier-shippers may be impaired by the Commission's vague, uncertain and punitive application of the California Public Utilities Code without effective judicial supervision and control.

Beyond this immediate impact on the important trucking industry in the nation's most populous state, the procedural aspects of this case present far-reaching questions as to the extent to which the Constitution requires meaningful judicial review procedures by state courts of punitive administrative agency action in the face of federal constitutional contentions. This important procedural due process issue raises weighty problems in light of earlier decisions of this Court which have led to confusion among state courts and to disputes among constitutional scholars. Never resolved by this Court, it is now sharply and squarely presented by the newly enacted penal sanctions of the California Public Utilities Code applied in this case.

1. By Sanctioning an Agency's Imposition of Fines and Penalties on the Basis of a Vague and Unarticulated "Administrative Test" Derived from a Judicially Undefined Statute, the California Supreme Court Has Approved the Taking of Appellants' Property in Violation of the Substantive Due Process Guarantees of the Fourteenth Amendment

Fundamental to the concept of due process is the theory that a statute imposing penalties must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). Indeed, "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (Ibid.). Compare *United States* v. *National Dairy Products Corp.*, 372 U.S. 29, 32-36 (1963) (narrowly directed indictment focusing on practice judicially defined and condemned for more than 50 years provides "fairly stable commercial standard" validating application of federal statute).

Moreover, as this Court recently recognized, the "deprivation of the right to fair notice" is even greater where "a statute precise on its face has been unforeseeably and retroactively expanded," punishing the individual for conduct he had "no reason even to suspect" was forbidden. *Bouie* v. *City of Columbia*, 378 U.S. ___, 32 U.S.L. Week 4701, 4702 (June 22, 1964).

Following these principles, this court has invalidated numerous punitive state business regulatory statutes as unconstitutionally vague, even when penal-

ties were applied by a court, rather than an administrative agency.[4]

Unlike analogous federal and state regulatory statutes,[5] the California Public Utilities Code since 1961 has empowered the Commission to impose fines upon highway carriers based *solely* on an *administrative*

[4] *Champlin Ref. Co.* v. *Corporation Comm'n*, 286 U.S. 210 (1932) (statute providing penalties for "waste" in production of oil); *Smith* v. *Cahoon*, 283 U.S. 553 (1931) (statute providing penalties for all types of carriers who operated without licenses); *Cline* v. *Frink Dairy Co.*, 274 U.S. 445 (1927) (antitrust law with vague exceptions); *Connally* v. *General Construction Co.*, 269 U.S. 385 (1926) (minimum wage statute imposing penalties); *American Seeding Machine Co.* v. *Kentucky*, 236 U.S. 660 (1915) (criminal antitrust statute embodying vague "normal market" standard); *Malone* v. *Kentucky*, 234 U.S. 639 (1914) and *Collins* v. *Kentucky*, 234 U.S. 634 (1914) (statute imposing fines for selling outside tobacco pool); *International Harvester Co. of America* v. *Kentucky*, 234 U.S. 216 (1914) (criminal antitrust statute); Cf. *United States* v. *Cardiff*, 344 U.S. 174 (1952) (self-contradictory federal statute providing penalties for failure to admit factory inspectors); *A. B. Small Co.* v. *American Sugar Ref. Co.*, 267 U.S. 233 (1925) and *United States* v. *L. Cohen Grocery Co.*, 255 U.S. 81 (1921) (federal statute imposing criminal penalties for "making unreasonable charges"). See also Note, *The Void for Vagueness Doctrine*, 109 U. Pa. L. Rev. 67, 81, 82-3 (1960).

[5] 49 U.S.C. § 16 (2, 8, 9) (Interstate Commerce Act, Railroad Provisions); 49 U.S.C. § 322 (Interstate Commerce Act, Motor Carriers); 49 U.S.C. § 1487 (Federal Aviation Program); 15 U.S.C. § 56 (FTC); 29 U.S.C. App. § 101.14 (NLRB); 47 U.S.C. §§ 11, 504 (FCC); Illinois Revised Statutes 1963, ch. 111⅔, §§ 80-83; McKinney's Consolidated Laws of New York Annotated, Public Service Law § 24; Purdon's Pennsylvania Statutes Annotated, Title 66, ch. 7, §§ 1501, 1502, 1504, 1505; Annotated Laws of Massachusetts, C. 25, § 5, C. 182, §§ 10, 14; General Statutes of Connecticut, Title 16, ch. 277, §§ 16-10, 16-15; Michigan Statutes Annotated, §§ 22-61, 22-65, 22-96, 22-158; Vernon's Annotated Penal Code of the State of Texas, Art. 1690 a. The Public Utilities Commission is the only regulatory commission in the state of California empowered to adjudicate penalties by its own action.

determination. California Public Utilities Code, § 3774, as amended by Stats. 1961, Ch. 1444, § 2.[6] Since 1961, therefore, the Commission's applications of the substantive provisions of California Public Utilities Code § 3668 bring into play the more exacting due process requirements governing the validity of penal statutes. E.g., *Winters* v. *New York*, 333 U.S. 507, 515 (1947).

Measured against these standards, California Public Utilities Code § 3668, as applied here by the Commission, manifestly fails to provide the requisite "fair notice" of the type of conduct which could subject a carrier to fines and penalties.

On its face, § 3668 proscribes several precise situations—i.e., "false billing, classification, weight, weighing or report of weight." Read in context with these specific enumerations, the statutory prohibition against permitting transportation at rates less than minimum rates "by any other device" contains no warning that it could be expanded to *a blanket prohibition of the employment of subhaulers by carriers affiliated in any way with shippers.*

Moreover, no clarifying judicial interpretation by any California court has ever indicated that the statute was intended to penalize such common arrange-

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[6] The Commission's punitive powers were still further increased in 1963 by enactment of Public Utilities Code § 3800, which permits the Commission to impose on any highway permit carrier an *additional* fine equal to the amount of any undercharges "directly or indirectly refunded or remitted in any manner or by any device." Had the Commission exercised this power in the instant cases, the subhaulers could have been liable to fines in excess of $100,000, based on the purported "refunds" they were ordered to recover from Alhambra and Ipco.

ments. Cf. *Konigsberg* v. *State Bar of California*, 353 U.S. 252, 263 (1957) (reversing California Supreme Court order where this Court did not have "the benefit of a definition" by the State court of the statutory standard applied); compare *United States* v. *National Dairy Products Corp.*, 372 U.S. 29 (1963).

Actually, the only § 3668 precedent relied on by the Commission in these cases is its *own* 1962 *Soule* decision (59 Cal. PUC 261). There the Commission found that a carrier which owned no equipment, conducted 43% of its operations through subhaulers, and was a wholly-owned subsidiary of its only shipper which had disregarded the subsidiary's separate corporate existence, was a "device" in violation of § 3668. The Commission imposed no penalty, but merely amended Soule's certificate so as to prohibit the use of subhaulers at less than minimum rates, and the California Supreme Court subsequently denied review. *Soule Transportation, Inc.* v. *California Public Utilities Commission*, Supreme Court No. S. F. 21024, May 29, 1962.[7]

Here, however, the Commission's *Alhambra* decision recited only the previously known interlocking ownership and the fact that in 1960 and 1961 Alhambra, for 8% of its business, used subhaulers who received less than the minimum tariff rates. The Commission noted, but dismissed as "'of no consequence", the fact that "Alahambra Trucking Co. charged and received

[7] Several other recent Commission decisions have adjudged violations of § 3668 based on differing types of affiliation between carriers and shippers. E.g., *Coast Trucking, Inc.*, 59 Cal. PUC 339 (1962); *Heron Mills, Inc.*, 59 Cal. PUC 507 (1962); *J & V Trucking Co.*, 59 Cal. PUC 337 (1962); *Southern California Lumber Transport*, 56 Cal. PUC 553 (1958) review denied, S.F. No. 20076, July 15, 1959.

from Black Diamond Co. the full minimum rate for the transportation of property." (pp. 7a, 6a, *infra*). Instead it theorized that Alhambra's reduced expenses from the use of subhaulers would somehow "inure to the benefit of Black Diamond", so as to mark the otherwise legitimate carrier as an illegal "device" subject to a punitive reparation order and fines. Similarly, the Commission concluded that Ipco's "reduced expenses", of which at most 24% *could* benefit Sequoia *stockholders*, would "inure" in some unspecified way "to the benefit of Sequoia" (p. 21a, *infra*), thus justifying a fine and reparation of 100% of the subhaulers' purported undercharges (pp. 24a, 26a, *infra*).

The vagueness of the Commission's "administrative test" was further highlighted by its answers to Appellants' Petitions for Review. There the Commission's decisions were retrospectively explained by reference to factual material appearing in the administrative hearing transcript which never appeared in the Commission's opinion and was not before the Supreme Court. E.g., Answer to Alhambra Petition, pp. 2-4, 6-7, 15-16; Answer to Ipco Petition, pp. 3-4, 7, 13-15.

Manifestly, as a guide for the future conduct of others who wish to avoid similar penalities, an administrative application of a statute based on such undisclosed factual elements not even recited in the administrative opinion is scarcely adequate to give fair warning of what conduct is actually prohibited and what is permitted.

In short, the Commission would now punish appellants because they could not prophesy in 1960 and 1961 that Section 3668 would be "unforeseeably and retroactively expanded" by administrative construction so as to make illegal conduct which was disclosed to the

Commission and permitted under their certificates and the applicable minimum rate tariff at the time the conduct occurred., E.g., *Bouie* v. *City of Columbia*, 378 U.S. , 32 U.S.L. Week 4701, 4702 (June 22, 1964).

Beyond its punitive and retroactive impact on the appellants, the California Supreme Court's tacit approval of the Commission's vague and unarticulated rationale may create serious economic hardship for California's small truckers and shippers as well as for those in other states whose regulatory commissions follow the lead of California. As ranking Commissioner Mitchell perceived, the Commission's approach "arbitrarily" penalizes carriers who happen to use subhaulers in their operation while leaving untouched the profits of a shipper-carrier which stem from other economies. Since California permits the ownership of carriers by shippers, or the carriage by shippers of their own goods, the Commission's theory paradoxically protects large integrated shipper-carriers to the disadvantage of small carriers, who must employ subhaulers to provide excess capacity at periods of peak demand, and of small shippers who cannot afford to perform all their own transportation.

The retrospective implementation of such arbitrary policies through punitive measures, without judicial definition and control, collides with the Fourteenth Amendment's requirement of fair notice as to what conduct is prohibited and what permitted and creates a substantial federal question requiring settlement by this court. Indeed, the novel punitive powers now accorded the California Public Utilities Commission by Public Utilities Code §§ 3774 and 3800 mark these cases as far more significant than the ordinary utility "confiscation" cases, e.g., *Atchison, T. & S. F. Ry. Co.*

v. *Public Utilities Commission of California*, 346 U.S. 346, 348-9 (1953), to which this Court has accorded plenary review on the merits in the past.

2. The California Supreme Court's Summary Refusal to Review the Commission's Punitive Application of Section 3668 Has Denied Appellants Procedural Due Process, and Raises Substantial and Unresolved Constitutional Questions of Far-Reaching Importance to Administrative Review Procedures of All States

The impermissible vagueness of the Commission's punitive application of § 3668 is compounded by the California Supreme Court's refusal to review the Commission's orders despite appellants' timely assertions of federal constitutional rights. Presenting a classic instance of the *need* for meaningful judicial review, this case illustrates the imperative necessity for clarification by this Court of the extent to which Fourteenth Amendment due process *requires* State courts to review administrative action imposing fines or other punitive sanctions.

The California procedure challenged in this case first permits the same administrative agency to bring charges, adjudicate guilt and impose penalties—without even the minimal safeguard of preliminary findings by an impartial hearing examiner—, and then authorizes the *only* state court which *could* review the agency's action to summarily deny review, without even requiring certification of the administrative record.

Particularly in light of the novel penal provisions of the California Public Utilities Code, this summary denial contrasts sharply with earlier holdings of this Court that the Due Process clause of the Fourteenth Amendment compels a state to provide "a fair oppor-

tunity" for submitting constitutional issues arising from regulatory action "to a judicial tribunal for determination upon its own independent judgment as to both law and facts." *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U.S. 287, 289 (1920). Cf. *Crowell* v. *Benson*, 285 U.S. 22, 54 (1932) (requiring *de novo* adjudication of "jurisdictional facts" in review of Federal agency action.)[8] Indeed, in the context of state utility regulation, Mr. Justice Frankfurter understood *Ben Avon* to require that "every State must afford judicial review in its courts of a claim under the Due Process Clause," and recognized that State action "in the absence of such judicial review" would be "unconstitutional." *Alabama Public Service Commission* v. *Southern R. Co.*, 341 U.S. 341, 362 (1950) (concurring opinion). Compare *Estep* v. *United States*, 327 U.S. 114, 120 (1946).

To be sure, "judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency." *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, 53 (1936). But no decision of this Court suggests that a summary refusal to review confiscatory or punitive agency action, by a state court *which did not even have the record of the administrative proceedings before it*, provides the requisite independent judicial judgment.

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[8] The California Court's refusal to even consider the underlying administrative record likewise obstructs the practice of *this* Court which, in reviewing the decisions of state courts, may wish to reexamine the evidence to ascertain whether it supports a state decision against a claim of federal right. E.g., *Great Northern R. Co.* v. *State of Washington*, 300 U.S. 154, 165 (1936); *Norris* v. *Alabama*, 294 U.S. 587, 589 (1935).

On the other hand, substantial uncertainty as to contemporary constitutional requirements in this context has arisen because of the absence of any authoritative pronouncement by this Court in recent years. In the four decades since this Court's *Ben Avon* decision requiring state courts to exercise "independent judgment" in reviewing agency action, state courts of final instance have been unable to ascertain the current force of this requirement in the very context in which it was announced. Some have held that the federal Constitution, as construed by this Court's *Ben Avon* decision, requires an independent judgment on the law *and* the facts.[9] Conversely, "Many state courts acknowledge that they do not exercise independent judicial judgment on all questions of law and fact" in such cases. 4 DAVIS, ADMINISTRATIVE LAW TREATISE, § 29.09, p. 176 (1958).[10]

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[9] New York: *Staten Island Edison Corp.* v. *Maltbie*, 296 N.Y. 374, 73 N.E. 2d 705 (1947); Massachusetts: *Opinion of the Justices*, 328 Mass. 679, 683, 106 N.E. 2d 259, 262 (1952); Georgia: *Georgia Public Service Commission* v. *Atlanta Gas Light Company*, 205 Ga. 863, 55 S.E. 2d 618 (1949); Indiana: *Public Service Commission* v. *Indianapolis Railways*, 225 Ind. 30, 72 N.E. 2d 434 (1947); Washington: *State ex rel. Pac. Tel. and Tel. Co.* v. *Department of Public Service of Washington*, 19 Wash. 2d 200, 142 P. 2d 498 (1943). For additional cases from Alabama, Oregon, South Dakota, Connecticut, Iowa, Tennessee, Texas, and West Virginia, see 4 DAVIS, ADMINISTRATIVE LAW TREATISE, §§ 29.09, p. 175 nn. 43-46 (1958).

[10] Professor Davis cites cases from 18 states to support this statement. Id. at 176-179, nn. 47-64. In all of these cases, however, the state court at least based its ultimate decision on a review of the administrative record and in some cases reversed the agency by applying the substantial evidence or some other test. See, e.g., *Central Maine Power Co.* v. *Public Utilities Commission*, 150 Me. 257, 109 A. 2d 512 (1954); *Minneapolis Street Ry. Co.* v. *City of Minneapolis*, 251 Minn. 43, 86 N.W. 2d 657 (1957); *In re New Jersey Power & Light Co.*, 9 N.J. 498, 89 A. 2d 26 (1952); *State*

Foremost constitutional scholars likewise cannot fathom the contours of this key aspect of state regulatory law today. On the premise that "the availability of judicial review is a necessary condition, psychologically if not logically, of a system of administrative powers which purports to be legitimate, or legally valid," Professor Jaffe's review of this Court's rulings concludes that in some, but not classifiable, regulatory areas "due process may require judicial process." Jaffe, *The Right to Judicial Review, Pts. I, II*, 71 Harv. L. Rev. 401, 769, 808 (1958). Professor Davis dissents, but notes "that the Supreme Court has managed to leave open nearly all parts of the question" and that "the opinions of the Supreme Court in recent decades are completely devoid of any formulation of principle concerning the constitutional minimum of review." 4 DAVIS, ADMINISTRATIVE LAW TREATISE, §§ 28.18, 28.19, pp. 93, 102, 107, n. 24 (1958).

The California Supreme Court's summary and silent denial of review, in the face of Constitutional contentions, dramatizes the jural void which leaves vital issues to be resolved without a guiding principle by this Court. On its face, California Public Utilities Code § 1760, as amended in 1933, appears to codify this Court's *Ben Avon* decision, by requiring the state Supreme Court in reviewing rulings of the Public Utilities Commission to "exercise an independent

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ex rel Rice v. *Public Service Commission*, 359 Mo. 109, 220 S.W. 2d 61 (1949); *State Corporation Commission* v. *Mountain States Telegraph & Telephone Co.*, 58 N.M. 260, 270 P. 2d 685 (1954); *United Electric Railways Co.* v. *Kennelly*, 80 R.I. 64, 90 A. 2d 775 (1952). Cf. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 488 (1951) (reversing Court of Appeals affirmance of administrative decision and directing consideration of all the evidence including "whatever in the record fairly detracts from its weight").

judgment on the law and the facts" in "any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States."[11]

But no such "independent judgment" is revealed by the one-line orders entered in these cases. Actually, the necessity for judicial resolution of substantive due process issues through "independent judgment," based on *at least* a review of the record, was underscored by the Commission's answers to appellants' Petitions for Review, which premised the agency's punitive application of § 3668 on additional facts neither cited nor discussed in the Commission's opinions appended to the Review Petitions presented to the Court. (Answer to Alhambra Petition, pp. 2-4, 6-7, 15-16; Answer to Ipco Petition, pp. 3-4, 7, 13-15).

The issues on this appeal thus transcend any academic dispute over the vitality of this Court's *Ben Avon* decision or other Constitutional precedents, or the precise content of reviewing tests such as "independent judicial judgment" or "substantial evidence". Rather, if penalties imposed by retrospective administrative action based on vague and judicially uninterpreted statutes may be sanctioned by a summary denial of all review by a state court, which does not even have the administrative record before it, no mean-

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[11] The Commission's answer to Ipco's Petition for Writ of Review ignored § 1760, and flatly asserted that "review is not authorized," citing California Public Utilities Code § 1757 to the effect that the "findings and conclusion of the Commission on questions of fact shall be final and shall not be subject to review except as provided in this article." Answer to Petition for Writ of Review, pp. 11-1 See also Answer to Alhambra Petition, p. 13.

ingful judicial review *is* required by the Constitution in the state regulatory field.

As this Court has recognized, administrative agencies frequently "work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient." Thus, the prospect of *unchecked administrative action* which "would place constitutional rights of liberty and property" at the "mercy of administrative officials" is "not one to be lightly regarded." *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 52 (1936). See also Jaffe, *The Right to Judicial Review*, 71 Harv. L. Rev. 401 (1958); cf. Friendly, *A Look at the Federal Administrative Agencies*, 60 Columbia L. Rev. 429 (1960); Hector, *Problems of the CAB and the Independent Regulatory Commissions*, 69 Yale L. J. 931 (1960); Berger, *Removal of Judicial Functions from Federal Trade Commission to a Trade Court: A Reply to Mr. Kintner*, 59 Mich. L. Rev. 199 (1960).

Recognition of a Constitutionally required minimum of judicial review, whereby "any initial exercise of power should be subject to check by an independent authority," can only contribute to the increased integrity of the administrative process. See 4 DAVIS, ADMINISTRATIVE LAW TREATISE, § 28.21 pp. 112-113 (1958). And particularly in the context of administratively imposed penalties, some pronouncement by this Court defining the minimal guarantees of procedural due process for judicial review of state administrative action[12] is now imperative to protect Federal Constitutional rights.

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[12] Such a statement might modify *Ben Avon* to take account of Federal experience under the "substantial evidence" rule. See *Universal Camera Corp. v. NLRB*, 340 U.S. 471 (1951). Cf. 4 DAVIS, ADMINISTRATIVE LAW TREATISE §§ 28.19, 28.07, pp. 120, 31 (1958).

Whether the Due Process Clause of the Fourteenth Amendment tolerates punitive agency action unchecked by meaningful judicial review is a substantial issue deserving review by this Court.

CONCLUSION

In this case the elements of statutory vagueness, punitive agency action, and abdication of judicial reviewing authority unite to create novel Due Process issues of far-reaching significance.

Leaving the California regulatory commission as "a law unto itself",[13] the California Supreme Court has sanctioned a retrospective and punitive administrative application of a regulatory statute, which exposes small truckers to harsh penalties without warning or guides, other than the Commission's fiat on a day-to-day basis by decisions which disclose no meaningful standard. This vindictive operation of the law is magnified by the California court's refusal to control or check the Commission's arbitrary exercise of administrative power.

For the reasons detailed in this Statement, appellants submit that the California Supreme Court's judgments pose federal questions of national importance

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[13] Committee on Administrative Agencies and Tribunals, *Review of Decisions and Orders of the Public Utilities Commission*, 33 Cal. St. B.J. 421, 422 (1958).

which warrant plenary review and resolution by this Court.

Respectfully submitted,

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July 16, 1964

APPENDIX A

The unreported orders of the Supreme Court of California denying Appellants' petitions for Writ of Review, the orders denying rehearing and the Opinions and Orders of the California Public Utilities Commission, reported at 60 Cal. PUC 537, 544, are as follows:

Filed November 27, 1963

William I. Sullivan, Clerk
By JWR, S. F. Deputy

Order Denying Writ of Review

S. F. No. 21440

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

ALHAMBRA TRUCKING COMPANY

v.

PUBLIC UTILITIES COMMISSION

Petition for writ of review DENIED.

SCHAUER, J. and McCOMB, J. are of the opinion that the petition should be granted.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of: order
as shown by the records of my office.

Witness my hand and the seal of the Court this 5th day of June, 1964.

WILLIAM I. SULLIVAN, *Clerk*

By: CRABTREE, *Deputy*
GIBSON, *Chief Justice*

Filed December 18, 1963

William I. Sullivan, Clerk
By JWR

Order Due December 27, 1963

Order Denying Rehearing

S. F. No. 21440

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

ALHAMBRA TRUCKING COMPANY

v.

PUBLIC UTILITIES COMMISSION

Petition for rehearing DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of: order
as shown by the records of my office.

Witness my hand and the seal of the Court this 5th day of June, 1964.

WILLIAM I. SULLIVAN, *Clerk*

By: CRABTREE, *Deputy*
GIBSON, *Chief Justice*

Before the Public Utilities Commission of the State of California

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Decision No. 64905

Case No. 7243

Investigation on the Commission's own Motion into the operations, rates and practices of Alhambra Trucking Co.; Trucking Unlimited; and J. A. Stafford Trucking, California corporations.

Berol, Loughran & Geernaert by *Bruce R. Geernaert*, for Alhambra Trucking Co.; *Harold Thurman*, for Trucking Unlimited; and *Donald Murchison*, for J. A. Stafford Trucking, respondents.

Elinore Charles and *Frank O'Leary*, for the Commission staff.

Opinion

On December 5, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of Alhambra Trucking Co. By amended order Trucking Unlimited and J. A. Stafford Trucking were named as respondents. The purpose of the order is to determine whether Alhambra Trucking Co. as a highway permit carrier has violated Section 3668 of the Public Utilities Code by assisting, suffering and permitting a shipper to obtain transportation of its property between points within this State at rates less than those established

by the Commission in Minimum Rate Tariff No. 2 and whether respondents have violated Sections 3664 and 3737 of the Public Utilities Code by charging, demanding and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

Pursuant to the order of investigation a public hearing was held at Sacramento before Examiner Martin J. Porter on April 24, 1962. Briefs have been filed and the matter is now ready for decision.

There are two issues in this case, one being incorrect billing by the carrier which resulted in undercharges, and the other being whether Alhambra Trucking Co. (a permit carrier) and Black Diamond Company (a shipper) are so united in interest, management and ownership as to make the use by Alhambra Trucking Co. of purported subhaulers, who receive less than the minimum rate for the transportation of property of the Black Diamond Company, a device by which the Black Diamond Company obtains transportation of its property at rates less than those established by the Commission in Minimum Rate Tariff No. 2.

The staff selected a review period of July 1, 1960, through January 31, 1961, and through a rate expert witness established that undercharges had occurred as follows:

Freight Bill No.	Date	Charge Assessed or Collected by Alhambra Trucking Co.	Charge Correct	Undercharge
1761	8/ 5/60	$256.82	$285.36	$ 28.54
1869	9/ 1/60	642.16	648.16	6.00
1929	9/14/60	468.50	627.79	159.29
2229	12/ 7/60	388.52	511.70	124.18
2306	12/22/60	240.95	258.80	17.85
2412	1/20/61	288.06	303.60	15.54
2398	1/25/61	378.68	554.16	175.48
2402	1/25/61	251.75	279.72	27.97
2427	1/28/61	256.39	284.88	28.49
2265	12/8, 9/60	474.63	672.46	197.83
2283	12/21/60	268.38	298.20	29.82
2284	12/21, 22/60	385.28	501.28	116.00

Undercharges for these shipments amounted to $926.99.

The following are shareholders of Alhambra Trucking Co., a permit carrier:

Name	No. of Shares
M. B. Kibbey	2,420
Henry Teichert	150
Robert D. Hemenway	297
Jack Reynolds	34
B. Epler	99

The following are shareholders of the Black Diamond Company, a corporation conducting a lumber business:

Name	No. of Shares
M. B. Kibbey	32,250
N. S. Lauppe	1,250
Robert B. Miller	1,250
Henry Teichert	5,097
Nancy T. Kibbey	6,000
Robert D. Hemenway	750
Jack C. Herney	154
T. H. Richards, Jr.	500
Joan K. Taylor	100
B. J. Siebenthal, M.D.	500
Patrick D. McIntosh	100
James McClatchy	1,000
P. E. Bradford	250

M. B. Kibbey is president of both Alhambra Trucking Co. and Black Diamond Company. Two of Alhambra's three-man board of directors are also directors of Black Diamond, and Mrs. Nancy Kibbey (wife of M. B. Kibbey) is vice president of Black Diamond and on its board of directors. Robert D. Hemenway is treasurer and office

manager of Alhambra Trucking Co. and treasurer of Black Diamond Company. Henry Teichert is secretary of both companies.

It appears from the record that M. B. Kibbey, Henry Teichert and Robert D. Hemenway, officers of both Alhambra Trucking Co. and Black Diamond Company, own approximately 95 percent of the stock of the trucking company and that they and M. B. Kibbey's wife own approximately 90 percent of the stock of the Black Diamond Company.

Alhambra Trucking Co. transports 92 percent of its business with its own equipment and uses subhaulers for the remaining 8 percent. The subhaulers so employed were Trucking Unlimited and J. A. Stafford Trucking.

Alhambra Trucking Co. charged and received from Black Diamond Company the full minimum rate for the transportation of property (except in the instances of undercharges as hereinbefore specified) and paid the subhaulers an amount less than the minimum rate.

It was stipulated that Alhambra Trucking Co. holds Highway Contract Carrier Permit No. 34,3353 and City Carrier Permit No. 34-3632 and J. A. Stafford Trucking holds Radial Highway Common Carrier Permit No. 19-23198 and Highway Contract Carrier Permit No. 19-49273 and that they have been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

The Commission records show that Trucking Unlimited holds Radial Highway Common Carrier Permit No. 19-18009 and Highway Contract Carrier Permit No. 19-18010 and a certificate of public convenience and necessity as a highway common carrier, and has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

Discussion

The facts here are sufficiently similar to the facts in Soule[1] to warrant reaching the same result. The interlocking of ownership, management and control between Black Diamond and Alhambra Trucking is sufficiently complete to justify concluding that the common stockholders of each corporation stand in a position ultimately to receive the benefit of the reduced rate transportation effected through subhaulers. As we said in Soule, it is not necessary to find that moneys were actually remitted to the ostensible shipper, either in the form of payments representing the difference between amounts paid to the ostensible prime carrier and what the carrier paid to the subhaulers or in the form of dividends, distribution of capital on dissolution, or otherwise. Thus, the fact that Black Diamond at all times paid the lawful minimum rates to Alhambra Trucking is of no consequence. The significant fact is that, to the extent that Alhambra Trucking paid less than the minimum rates for transportation of property in behalf of Black Diamond, Alhambra Trucking thereby reduced its expenses and increased its income, which increased income ultimately inures to the benefit of Black Diamond, the majority stockholder interest of which, for the purposes herein, is substantially identical with the majority stockholder interest of Alhambra Trucking. By reason of the foregoing, the Black Diamond Company benefits notwithstanding that Alhambra's profits or surplus remain undistributed.

Based upon a consideration of the evidence and arguments herein, the Commission finds that there exists such a unity of ownership, management and control between Black Diamond Company as shipper and respondent Alhambra Trucking Co. as a highway permit carrier as to warrant disregard of Alhambra Trucking Co. as a separate corporate

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[1] Investigation on the Commission's own motion into the operations, rates and practices of Soule Transportation, Inc., a corporation—Case No. 7105, Decision No. 63103, dated January 9, 1962. Petition for Writ of Review denied May 29, 1962.

entity for the purpose of enforcing the minimum rates prescribed by Minimum Rate Tariff No. 2. The subhaulers were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2, and the extent to which the subhaulers received less than the minimum rates is the measure of the benefit which the shipper, in this case Black Diamond Company, received.

Based upon the evidence we hereby find that:

1. Alhambra Trucking Co., J. A. Stafford Trucking and Trucking Unlimited are engaged in the transportation of property over the public highways for compensation; Alhambra Trucking Co. as a highway contract carrier under Permit No. 34-3353 and as a city carrier under Permit No. 34-3632; J. A. Stafford Trucking as a radial highway common carrier under Permit No. 19-23198 and as a highway contract carrier under Permit No. 19-49273; Trucking Unlimited as a radial highway common carrier under Permit No. 19-18009, as a highway contract carrier under Permit No. 19-18010 and as a highway common carrier pursuant to a certificate of public convenience and necessity.

2. Respondent Alhambra Trucking Co. assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as follows:

Freight Bill No.	Date	Charge Assessed or Collected by Alhambra Trucking Co.	Correct Charge	Undercharge
1761	8/ 5/60	$256.82	$285.36	$ 28.54
1869	9/ 1/60	642.16	648.16	6.00
1929	9/14/60	468.50	627.79	159.29
2229	12/ 7/60	388.52	511.70	124.18
2306	12/22/60	240.95	258.80	17.85
2412	1/20/61	288.06	303.60	15.54
2398	1/25/61	378.68	554.16	175.48
2402	1/25/61	251.75	279.72	27.97
2427	1/28/61	256.39	284.88	28.49
2265	12/8, 9/60	474.63	672.46	197.83
2283	12/21/60	268.38	298.20	29.82
2284	12/21, 22/60	385.28	501.28	116.00

Undercharges for these shipments amounted to $926.99.

3. During the period of August 5, 1960 through January 28, 1961, respondent Alhambra Trucking Co. engaged other highway permit carriers as subhaulers to transport property of Black Diamond Company within this State, to whom respondent paid less than the minimum rates prescribed by Minimum Rate Tariff No. 2 in respects and amounts as follows:

Freight Bill No.	Date	Difference Between Correct Charge and Amount Paid Subhauler	Name of Subhauler
1761	8/ 5/60	$125.36	Trucking Unlimited
1869	9/ 1/60	168.16	Trucking Unlimited
1929	9/14/60	307.79	Trucking Unlimited
2229	12/ 7/60	191.70	Trucking Unlimited
2306	12/22/60	98.80	Trucking Unlimited
2412	1/20/61	103.60	Trucking Unlimited
2398	1/25/61	234.16	Trucking Unlimited
2402	1/25/61	119.72	Trucking Unlimited
2427	1/28/61	124.88	Trucking Unlimited
2265	12/8, 9/60	252.46	J. A. Stafford Trucking
2283	12/21/60	158.20	J. A. Stafford Trucking
2284	12/21, 22/60	221.28	J. A. Stafford Trucking and Trucking Unlimited

4. There exists such a unity of ownership, interest and control between Black Diamond Company as shipper and respondent Alhambra Trucking Co. as a highway permit carrier as to make such an intercorporate arrangement a device by means of which Section 3668 of the Public Utilities Code was violated.

5. Trucking Unlimited and J. A. Stafford Trucking were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

6. Alhambra Trucking Co. should review its records relating to all transportation performed in behalf of Black Diamond Company wherein Alhambra Trucking Co. employed other carriers to effect such transportation between July 1, 1960, and the effective date of this order, and should

pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers.

7. Trucking Unlimited and J. A. Stafford Trucking should review their records relating to all transportation wherein they were engaged by Alhambra Trucking Co. to transport property in behalf of Black Diamond Company between July 1, 1960, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and should take such action, including legal action, as may be necessary to collect the differences between the lawful minimum rates and the amounts they received for such transportation.

8. Alhambra Trucking Co.'s permits should be suspended for a period of five consecutive days, or, in the alternative, it should be required to pay a fine of $2,000.

ORDER

IT IS ORDERED that:

1. Alhambra Trucking Co. cease and desist from permitting Black Diamond Company to obtain transportation of property between points in this State at rates less than the minimum rates established by the Commission.

2. If, on or before the twentieth day after the effective date of this order, respondent Alhambra Trucking Co. has not paid the fine referred to in paragraph 9 of this order, then Highway Contract Carrier Permit No. 34-3353 and City Carrier Permit No. 34-3632 issued to Alhambra Trucking Co. shall be suspended for five consecutive days starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent shall not, by leasing the equipment or other facilities used in operations under these permits for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

3. Respondent shall post at its terminal and station facilities used for receiving property from the public for

transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its highway contract carrier permit and city carrier permit have been suspended by the Commission for a period of five days. Within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. Alhambra Trucking Co. shall review its records relating to all transportation performed in behalf of Black Diamond Company wherein Alhambra Trucking Co. employed other carriers to effect such transportation between July 1, 1960, and the effective date of this order, and shall pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers.

5. Trucking Unlimited and J. A. Stafford Trucking shall review their records relating to all transportation wherein they were engaged by Alhambra Trucking Co. to transport property in behalf of Black Diamond Company between July 1, 1960, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and shall take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

6. Within ninety days after the effective date of this decision, Alhambra Trucking Co., Trucking Unlimited and J. A. Stafford Trucking shall file with the Commission a report setting forth the lawful minimum rates for the transportation and the amount paid Trucking Unlimited and J. A. Stafford Trucking found after examination required by paragraphs 4 and 5 hereof.

7. In the event charges to be collected as provided by paragraph 5 of this order, or any part thereof, remain uncollected one hundred and twenty days after the effective

date of this order, Trucking Unlimited and J. A. Stafford Trucking shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such until such charges have been collected in full or until further order of this Commission.

8. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended Highway Contract Carrier Permit No. 34-3353 issued to Alhambra Trucking Co., by prohibiting said Alhambra Trucking Co., whenever it engages other carriers in connection with the transportation of property for Black Diamond Company or of its customers and suppliers, from paying such other carriers less than the applicable minimum rates established by the Commission.

9. As an alternative to the suspension of operating rights imposed by paragraph 2 of this order, Alhambra Trucking Co. may pay a fine of $2,000 to this Commission on or before the twentieth day after the effective date of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Alhambra Trucking Co., Trucking Unlimited and J. A. Stafford Trucking, and this order shall become effective twenty days after the date of such service upon the respondents.

Dated at San Francisco, California, this 5th day of February, 1963.

George G. Grover
President
Everett C. McKeage
Frederick B. Holoboff
Commissioners

(Seal) Certified as a True Copy
R. J. Pajalich
Secretary, Public Utilities Commission,
State of California.

I concur in part and dissent in part.

The Commission, *now*, in issuing operating permits and in reviewing permits issued in the past, where it appears that there is an affiliation between carrier and shipper by reason of common ownership, management, or control has specified in such permits, for the future, that not less than the applicable minimum rates shall be paid by such carrier to subhaulers engaged to carry the property of the affiliated shipper.[1]

The problem presented to the Commission, herein, is what action shall be taken against a carrier possessing an unrestricted permit and found to be affiliated with a shipper, where in the past less than the applicable minimum rate has been paid by the carrier to a subhauler engaged in carrying the property of the affiliated shipper? Shall we order the carrier to reimburse the subhaulers arbitrarily? This appears to be the present practice (as in the instant decision). Or rather, should we not examine the operations of the respondent carriers and reach a conclusion based on a study of their own individual practices? I would suggest that the latter course is the most logical and the most equitable. And it then follows—after an examination of the record in this case, that no action other than a future restriction of Alhambra's permit is warranted because of its shipper-carrier relationship.

Alhambra transports 92 percent of its carrier business by its own equipment and a minimal amount, 8 percent by subhaulers. There was no evidence that Alhambra by any method passed on to Black Diamond any part of the difference between the rates paid by Alhambra to subhaulers and the lawful minimum rate. Any benefit which Black Diamond received is essentially the same benefit that occurs in every shipper-carrier alter ego. A shipper that operates under a carrier permit can effect economies in operation which will redound to its financial advantage, even though it engages subhaulers and pays the subhaulers the minimum

[1] Decision No. 63227, Case No. 6567; Decision No. 63515, Case No. 6541.

rate. If a shipper pays his alter ego carrier $100,000 a year in minimum rates for transportation and the carrier declares a profit of $5,000 a year, does not the shipper profit similarly as the shipper-carrier who employs a subhauler at less than the minimum rate? Therefore, if we attempt to apply a profit formula as the sole criterion of the carrier's actions, we should be consistent in its application. I do not think we should be so exclusive.

Alhambra is a carrier that reports a gross operating revenue of over $100,000 a year. It employs its own trucks and drivers. If the carrier were of a mind to circumvent Section 3668 and evade minimum rates illegally, would it not employ subhaulers on a 100 percent basis and reap a greater financial harvest than employ subhaulers for only 8 percent of its traffic with the same attendant risk of discovery and for a lesser return?

I cannot conclude from the evidence submitted that the carrier was transporting property in a manner designed to constitute a device and thus evade Minimum Rate Tariff No. 2.

/s/ PETER E. MITCHELL
Peter E. Mitchell
Commissioner

Filed October 16, 1963

William I. Sullivan, Clerk
By Crabtree, S. F. Deputy

Order Denying Writ of Review

S. F. No. 21334

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

CONNOLLY et al.

v.

PUBLIC UTILITIES COMMISSION, etc., et al.

Petition for writ of review DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of order as shown by the records of my office.

Witness my hand and the seal of the Court this 8th day of June, 1964.

WILLIAM I. SULLIVAN, *Clerk*

By: CRABTREE, *Deputy*

GIBSON, *Chief Justice*

Filed November 13, 1963

William I. Sullivan, Clerk
By JWR, S. F. Deputy

Order Due November 15, 1963

Order Denying Rehearing

S. F. No. 21334

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

CONNOLLY et al.

v.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

Petition for rehearing DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of order as shown by the records of my office.

Witness my hand and the seal of the Court this 8th day of June, 1964.

WILLIAM I. SULLIVAN, *Clerk*

By: CRABTREE, *Deputy*
GIBSON, *Chief Justice*

Decision No. 64901

Before the Public Utilities Commission
of the State of California

Investigation on the Commission's own Motion into the relationships, operations, rates and practices of T. T. CONNOLLY and W. A. COKE, general partners, and F. L. ARNDT, G. V. BOSCARIOL, VERA BEALE, G. B. POTTER, B. H. DENNIS, PETITE LUELLWITZ, D. C. MCLEAN, H. P. HEPPNER, NICK KOVACEVICH, VICTOR JOHNSON, M. V. MCMILLAN, E. P. IVORY, GEORGE HARRES and H. M. IVORY, limited partners, copartners doing business as IPCO TRANSPORTATION COMPANY, SEQUOIA FOREST INDUSTRIES, INC., a California corporation; and RONALD O. DOOMS, BERNHARD R. DOERKSEN, and RALPH D. JENNER.	Case No. 7359 (Filed May 22, 1962)

William H. Kessler, appearing for all respondents, except Ralph D. Jenner.

Hugh N. Orr, for the Commission staff.

Opinion

On May 22, 1962, the Commission issued its order instituting investigation into the operations, rates and practices of T. T. Connolly and W. A. Coke, general partners, and F. L. Arndt, G. V. Boscariol, Vera Beale, G. B. Potter,

B. H. Dennis, Petite Luellwitz, D. C. McLean, H. P. Heppner, Nick Kovacevich, Victor Johnson, M. V. McMillan, E. P. Ivory, George Barres and H. M. Ivory, limited partners, doing business as IPCO Transportation Company, hereinafter referred to collectively as respondent IPCO, for the purpose of determining (1) whether respondent IPCO has violated Sections 3664 or 3667 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for the transportation of property over the public highways than the applicable charges prescribed in Minimum Rate Tariff No. 2; (2) whether respondent IPCO is an alter ego of respondent Sequoia Forest Industries, Inc., employed as a device by which Sequoia Forest Industries Inc., may be obtaining transportation of property between points within the State of California at rates less than the minimum rates prescribed by Minimum Rate Tariff No. 2 in violation of Section 3668 of the Public Utilities Code; (3) whether through common ownership, management or control of respondent IPCO and its authorization to operate as a radial highway common carrier and by the use of "subhaulers" employed by said IPCO, Sequoia Forest Industries, Inc., hereinafter referred to as Sequoia, has sought to obtain or has obtained transportation of its property at less than the minimum rates or charges prescribed by the Commission in violation of Section 3669 of the Public Utilities Code; (4) whether respondents Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner, or any of them, as highway permit carriers, have charged, demanded, collected, received or accepted for the transportation of property or for any service in connection therewith, purportedly performed as a subhauler for IPCO, rates or charges less than the minimum rates and charges applicable to such transportation which have been established by the Commission in violation of Section 3667 of the Public Utilities Code.

Pursuant to the order of investigation a public hearing was held at Fresno before Examiner Martin J. Porter on

July 26 and 27, 1962, and on the latter date the matter was submitted.

IPCO consists of two general partners, W. A. Coke and T. T. Connolly, and fourteen limited partners. The stock of Sequoia is owned by Gus Luellwitz, Petite Luellwitz, Vera Beale and Grant Potter.

The commission staff presented evidence that an examination of IPCO records and method of operation for the month of June 1961, showed that practically all of the transportation performed by IPCO was for Sequoia or one of its subsidiaries, and that IPCO employs subhaulers who perform the actual transportation.

The evidence also shows that W. A. Coke and T. T. Connolly manage and supervise all the operations of IPCO and both hold responsible positions with Sequoia. T. T. Connolly is treasurer and chief accountant of Sequoia and W. A. Coke is shipping foreman of Sequoia. Petite Luellwitz is a limited partner of IPCO and owns, together with her husband Gus Luellwitz, approximately 95% of the stock of Sequoia. G. B. Potter is a limited partner of IPCO and a stockholder, vice president and general manager of Sequoia. F. L. Arndt is a limited partner of IPCO and is the secretary of Sequoia. B. H. Dennis is a limited partner of IPCO and is the sales manager of Sequoia. Vera Beale is a limited partner of IPCO and is a stockholder of Sequoia. IPCO and Sequoia share common headquarters and employees of Sequoia perform services for IPCO. Sequoia bills IPCO for the services of such employees and for telephone, postage, office space and supplies. Almost all of the transportation performed by IPCO is for Sequoia or one of its subsidiaries.

The staff selected a review period of June 1961 and through a rate expert witness established that undercharges had occurred as follows:

Freight Bill No.	Date	Charge Assessed Or Collected By Respondent	Correct Charge	Undercharge
08332	6/ 5/61	$ 131.85	$ 204.80	$ 72.95
08333	6/ 5/61	161.21	232.86	71.65
08335	6/ 5/61	151.54	168.39	16.85
08336	6/ 5/61	93.81	120.60	26.79
08340	6/ 6/61	133.33	208.42	75.09
08366	6/ 9/61	102.00	216.00	114.00
08367	6/ 9/61	102.00	160.00	58.00
08369	6/ 9/61	344.41	370.37	25.96
08350	6/ 7/61	13.22	17.80	4.58
08428	6/1-15/61	2,979.89	3,406.30	426.41
08419	6/16/61	37.40	41.84	4.44

Undercharges for these shipments amounted to $896.72

The rate witness testified that the main cause of the undercharges was failure to have written instruction from the shipper authorizing split delivery and using the wrong classification rating for the commodity as shown on the document.

The respondent's evidence relating to such undercharges was to the effect that it was the shipper's intent that these shipments be split deliveries and the commodity classification set forth on the documents was in error; that in fact the product shipped was one that would take the lower rate and therefore there would be no undercharges as to these shipments.

With respect to transportation in behalf of Sequoia where subhaulers were used, IPCO charged and received from Sequoia the full minimum rate for the transportation of property (except in the instance of undercharges hereinbefore referred to) and paid subhaulers less than the minimum rate.

It was stipulated that IPCO holds Radial Highway Common Carrier Permit No. 54-3795 and has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto, and that respondents Ronald O. Dooms and Bernhard R. Doerksen are operating

under permitted authority; that Ronald O. Dooms has been served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and Bernhard R. Doerksen has been served with Minimum Rate Tariff No. 8 and Distance Table No. 4. The evidence shows that respondent Ralph D. Jenner holds Radial Highway Common Carrier Permit No. 10-3949 and was served with Minimum Rate Tariff No. 2 and Distance Table No. 4.

Discussion

The facts here are sufficiently similar to the facts in Soule [1] to warrant reaching the same result. The interlocking of ownership, management and control between IPCO and Sequoia is sufficiently complete to justify concluding that the partners of IPCO and the stockholders of Sequoia stand in a position ultimately to receive the benefit of the reduced rate transportation effected through subhaulers. As we said in Soule, it is not necessary to find that moneys were actually remitted to the ostensible shipper, either in the form of payments representing the difference between amounts paid to the ostensible prime carrier and what the carrier paid to the subhauler or in the form of dividends, distribution of capital on dissolution, or otherwise. Thus, the fact that Sequoia at all times paid the lawful minimum rates to IPCO is of no consequence. The significant fact is that, to the extent that IPCO paid less than the minimum rates for transportation of property in behalf of Sequoia, IPCO thereby reduced its expenses and increased its income, which increased income ultimately in part inures to the benefit of Sequoia, of which substantial stockholders are also partners in IPCO.

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[1] Investigation on the Commission's own motion into the operations, rates and practices of Soule Transportation, Inc., a corporation—Case No. 7105, Decision No. 63103, dated January 9, 1962. Petition for Writ of Review denied May 29, 1962.

Based upon a consideration of the evidence and arguments herein, the Commission finds that there exists such a unity of ownership, management and control between Sequoia as shipper and IPCO as a highway permit carrier as to make such an arrangement a device by means of which Section 3668 of the Public Utilities Code was violated. The subhaulers were in fact prime carriers who received less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2, and the extent to which the subhaulers received less than the minimum rates is the measure of the benefit which the shipper, in this case Sequoia, received.

Based upon the evidence we hereby find that:

1. IPCO Transportation Company, a partnership, Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner hold permits authorizing them to transport property over the public highways for compensation.

2. Respondent IPCO assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as follows:

Freight Bill No.	Date	Charge Assessed Or Collected By Respondent	Correct Charge	Undercharge
08332	6/ 5/61	$ 131.85	$ 204.80	$ 72.95
08333	6/ 5/61	161.21	232.86	71.65
08335	6/ 5/61	151.54	168.39	16.85
08336	6/ 5/61	93.81	120.60	26.79
08340	6/ 6/61	133.33	208.42	75.09
08366	6/ 9/61	102.00	216.00	114.00
08367	6/ 9/61	102.00	160.00	58.00
08369	6/ 9/61	344.41	370.37	25.96
08350	6/ 7/61	13.22	17.80	4.58
08428	6/1-15/61	2,979.89	3,406.30	426.41
08419	6/16/61	37.40	41.84	4.44
			Undercharges for these shipments amounted to	$ 896.72

3. During the months of May and June 1961, respondent IPCO engaged other highway permit carriers as subhaulers to transport property of Sequoia within this State, to whom respondent paid less than the minimum rates prescribed by Minimum Rate Tariff No. 2 in respects and amounts as follows:

Freight Bill No.	Date	Difference between correct charge and amount paid subhauler	Name of Subhauler
08332	6/ 5/61	$ 92.10	R. O. Dooms Trucking
08333	6/ 5/61	84.55	"
08335	6/ 5/61	88.02	"
08336	6/ 5/61	34.29	"
08340	6/ 6/61	71.80	"
08341	6/ 6/61	14.46	"
08352	6/ 8/61	13.40	"
08356	6/ 8/61	116.50	"
08361	6/ 9/61	17.60	"
08362	6/ 9/61	17.60	"
08366	6/ 9/61	124.00	"
08367	6/ 9/61	68.00	"
08369	6/ 9/61	57.57	"
08373	6/10/61	12.14	"
08238	5/19/61	20.10	Doerksen Bldg. Material
08239	5/19/61	32.51	"
08316	6/ 1/61	15.46	"
08350	6/ 7/61	13.15	"
08348	6/ 7/61	18.27	"
08349	6/ 7/61	1.38	"
08358	6/ 8/61	21.56	"
08428	6/1-15/61	2,120.93	R. D. Jenner
8392	6/13/61	17.79	"
8401	6/14/61	18.63	"
8412	6/15/61	25.14	"
8419	6/16/61	12.39	"

4. There exists such a unity of ownership, management and control between Sequoia as shipper and respondent IPCO as a highway permit carrier as to make such arrangement a device by means of which Section 3668 of the Public Utilities Code was violated.

5. Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner were in fact prime carriers who received less

than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

6. IPCO should review its records relating to all transportation performed in behalf of Sequoia wherein IPCO employed other carriers to effect such transportation between May 1, 1961, and the effective date of this order, and should pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amounts previously paid to such other carriers.

7. Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner should review their records relating to all transportation wherein they were engaged by IPCO to transport property in behalf of Sequoia between May 1, 1961, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and should take such action, including legal action, as may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

8. IPCO's permit should be suspended for a period of five consecutive days, or, in the alternative, it should be required to pay a fine of $2,000.

ORDER

IT IS ORDERED that:

1. IPCO Transportation Company shall cease and desist from permitting Sequoia Forest Industries, Inc., to obtain transportation of property between points in this State at rates less than the minimum rates established by the Commission.

2. If, on or before the twentieth day after the effective date of this order, respondent IPCO Transportation Company has not paid the fine referred to in paragraph 9 of this order, then Radial Highway Common Carrier Permit

No. 54-3795 issued to T. T. Connolly and W. A. Coke, doing business as IPCO Transportation Company, shall be suspended for five consecutive days starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent shall not, by leasing the equipment or other facilities used in operations under this permit for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

3. IPCO Transportation Company shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its radial highway common carrier permit has been suspended by the Commission for a period of five days. Within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. IPCO Transportation Company shall review its records relating to all transportation performed in behalf of Sequoia Forest Industries, Inc., wherein IPCO employed other carriers to effect such transportation between May 1, 1961, and the effective date of this order, and shall pay to such other carriers the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers.

5. Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner shall review their records relating to all transportation wherein they were engaged by IPCO to transport property in behalf of Sequoia between May 1, 1961, and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and shall take such action, including legal action, as

may be necessary to collect the difference between the lawful minimum rates and the amounts they received for such transportation.

6. Within ninety days after the effective date of this order, respondents shall complete the examination of their records required by paragraphs 4 and 5 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to such examination.

7. In the event charges to be collected as provided by paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner shall institute legal proceedings to effect collection and shall submit to the Commission on the first Monday of each month a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such until such charges have been collected in full or until further order of this Commission.

8. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 54-3795 issued to T. T. Connolly and W. A. Coke, doing business as IPCO Transportation Company, by prohibiting said IPCO whenever it engages other carriers in connection with the transportation of property for Sequoia or of its customers or suppliers, from paying such other carriers less than the applicable minimum rates established by the Commission.

9. As an alternative to the suspension of operating rights imposed by paragraph 2 of this order IPCO Transportation Company may pay a fine of $2,000 to this Commission on or before the twentieth day after the effective date of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon T. T. Con-

nolly, W. A. Coke, Sequoia Forest Industries, Inc., Ronald O. Dooms, Bernhard R. Doerksen and Ralph D. Jenner, and this order shall become effective twenty days after the date of such service upon said respondents.

Dated at San Francisco, California, this 5th day of February, 1963.

George G. Grover
President
Everett C. McKeage
Frederick B. Holoboff
Commissioners

Certified as a True Copy, R. J. Pajalich, Secretary, Public Utilities Commission, State of California.

APPENDIX B

Pertinent Statutory Provisions

CALIFORNIA PUBLIC UTILITIES CODE

Division I—Regulation of Public Utilities

Part I — Public Utilities Act

Chapter 9 — Hearings and Judicial Review

Article 3 — Judicial Review

§ 1756. Time for application for review to Supreme Court: Return of writ: Hearing. Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. The writ shall be made returnable not later than 30 days after the date of issuance, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown it is continued.

§ 1757. Introduction of new evidence: Limit of review: Finality of findings and conclusions. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions

of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.

§ 1759. Jurisdiction of courts to review orders or decisions of commission. No court of this state, except the Supreme Court to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, except that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases.

§ 1760. When Supreme Court to exercise independent judgment on law and facts. In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.

Division II—Regulation of Related Businesses by the Public Utilities Commission

Chapter 1 — Highway Carriers

Article 6 — Rates

§ 3668. Affording transportation at more or less than established rates by means of false billing, etc., forbidden. No highway permit carrier, or any officer or agent thereof, or any person acting or employed

by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device, assist, suffer, or permit any corporation or person to obtain transportation for, any property between points within this State at rates less than the minimum rates or more than the maximum rates then established or approved by the commission.

Article 9 — Suspension and Revocation of Permits

§ 3774. Permissible grounds for cancellation, revocation, or suspension of permit: Imposition of fine as alternative. The commission may cancel, revoke, or suspend the operating permit or permits of any highway carrier upon any of the following grounds:

(a) Any illegally conducted highway carrier operations.

(b) The violation of any of the provisions of this chapter, or of any operating permit issued thereunder.

(c) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

(d) The conviction of the highway carrier of any misdemeanor under this chapter.

(e) The rendition of a judgment against the highway carrier for any penalty imposed under this chapter.

(f) The failure of a highway carrier to pay any fee imposed upon the carrier within the time required by law.

As an alternative to the cancellation, revocation, or suspension of an operating permit or permits,

the commission may impose upon the holder of such permit or permits a fine of not exceeding five thousand dollars ($5,000). All fines collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund.

[Amended by Stats 1961 ch 1444 § 2.] (Supp. 1961)